

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 840 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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DK PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR AM RAVAL, for petitioner

MR YOGESH PATEL for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of Decision: 30/12/99

C.A.V.JUDGMENT

1. The petitioner, by this petition under Article 226 of the Constitution of India prays for directions to the respondent nos.2 and 3 to forthwith confer him on the post of English Stenographer Grade-II and further direct them to treat him as English Stenographer Grade-II with retrospective effect from the date of his initial appointment, that is, from November, 1984 with all

consequential benefits, like leave, increment, pay scale etc. Second prayer is made for directions to the respondents, and in particular, respondent No.3 to treat the petitioner's services as English Stenographer Grade-II from November, 1984 with all consequential benefits including his seniority and other financial benefits whatsoever accrued out of his service period as Stenographer Grade-II right from November, 1984.

2. After filing of this Special Civil Application, the petitioner prayed for amendment to the same and accordingly he was permitted to amend this Special Civil Application. By this amendment, he further incorporated two prayers. In the first prayer, he prayed for a writ of mandamus and/or a writ of certiorari or any other writ, order or direction, quashing and setting aside the order No.40 of 1987 dated 27.2.1987 - Annexure-A reverting him and changing his cadre from the post of English Stenographer Grade-III to that of Section Writer. Second prayer is made for interim relief or stay of the order at Annexure-K dated 15.7.1989. Under this order, services of the petitioner was brought to an end. In amended prayer - Annexure-A mentioned by the petitioner seems to be incorrect. It is Annexure-J, page 39 of this Special Civil Application.

3. Facts of the case in brief are that, the petitioner was initially appointed as English Stenographer Grade-III and attached to the Civil Court (Senior Division), Mahesana, in the month of November, 1984. This appointment was purely a temporary/adhoc and fixed term appointment which clearly born out from Annexure-A on the record of this Special Civil Application at page 17. The petitioner has come up with the case that, under office order dated 24.4.1985 Annexure-B he was regularly appointed as English Stenographer Grade-III. The grievance is made by the petitioner that by giving him artificial break, he is deprived of certain consequential benefits including the increment for which he was entitled right from the date of his first appointment. It is stated that, he has possessed requisite qualifications for the post of English Stenographer Grade-III as well as for English Stenographer Grade-II. Under the resolution of the Government, Legal Department, Gandhinagar dated 17.1.1989, it is provided that English /Gujarati Stenographers Grade-III in the pay-scale of Rs.350-500 be introduced with immediate effect. In the resolution as per the petitioner's case the Government directed that where and to the extent that stenographer's Grade-II are not available in the courts subordinate to this Court,

the posts of stenographers Grade-II should be down graded and filled in by stenographer Grade-III with the condition that those down-graded posts should be upgraded again as and when the incumbents qualify for appointment as stenographer Grade-II. Relying upon the resolution, it is the contention of the learned counsel for the petitioner that since the inception the petitioner possesses qualification prescribed for the post of stenographer Grade-II. He should have been taken to be stenographer Grade-II right from his appointment. The petitioner submitted an application on 2.5.1986 to the respondent No.3 requesting him for considering his case and for treating him as stenographer Grade-II. In December, 1984 the petitioner applied for the post of English Stenographer Grade-II in reply to the advertisement given in "Sandesh" daily newspaper by the respondent No.3. He was called for interview. However, he was not selected. It is the say of the petitioner that, at that time only two candidates had applied for the aforesaid post of English Stenographer Grade-II, out of which one was the petitioner. Neither of the candidate was selected for the said post, again advertisement came to be published in the newspaper in the month of April, 1985. The petitioner in response to the same applied through proper channel. About dozen of candidates were called for interviews, the petitioner was one of them, but he was not selected. Three other candidates were selected and appointed as Stenographer Grade-II.

4. It is grievanced in Special Civil Application against his nonselection on both occasions aforesaid on the post of English Stenographer Grade-II. This grievance made by the petitioner cannot be entertained for the reasons, firstly, he has not made any such prayer in the Special Civil Application. Secondly, those three persons who have been selected are not parties to this Special Civil Application, and thirdly this grievance cannot be entertained after a considerable long period.

5. It is stated that after filing of this Special Civil Application on 6.11.1987 the petitioner could not get it circulated as the advocates were on strike. The respondents knowing of the fact of filing of this Special Civil Application passed the order prejudiced to him on 27.2.1987 which was served upon the petitioner on 2.3.1987. He was removed from the post of Stenographer Grade-III to that of Section Writer. Copy of this order is produced on the record of this Special Civil Application - Annexure-J though in the prayer as stated earlier it was mentioned as Annexure-A. The petitioner

filed Special Civil Application No.845/87 challenging the order - Annexure-J and on the suggestion of the Court, that petition was not persuaded by him and necessary amendment was granted which was prayed for in the Special Civil Application. Second amendment which was prayed by the petitioner, has also been granted by this court on 20.2.1989.

6. Facts stated in the second amendment are that, services of the petitioner as per the order of this court passed in this Special Civil Application could have been terminated in accordance with law and the order of termination if any made is to be produced on the record of this Special Civil Application. It is alleged that his services were brought to an end under the order dated 15.7.1989 - Annexure-K on the record of this Special Civil Application. It is the grievance of the petitioner that his services were terminated retaining his juniors in the services. He was called for fresh selection vide order dated 18.8.1989. It is urged that his termination of services was wholly arbitrary and made in colourable exercise of power though he was within sanctioned strength of the stenographers. There was no reduction of post. In addition to four permanent posts, There were two temporary posts of stenographers and two of the petitioner's juniors have been continued. This termination has been challenged on the ground of malafide also. He stated the facts of two persons, namely, Smt.S.B.Nabisen and N.H.Patel. It is contended that, Smt.S.B.Nabisen was appointed to the post of Stenographer Grade-II on 25.3.1988. What is stated that whether it is Stenographer Grade-II or Grade-III, they were doing the same work and his services were discontinued. Continuing the services of this lady was illegal and violative of Articles 14 and 16 of the Constitution of India. So far as N.H.Patel is concerned it was stated to be appointed as Stenographer Grade-III in April, 1982. Thereafter, he has been redesignated as Stenographer Grade-II. It is the grievance of the petitioner that, these persons were not qualified as to the speed of 100 w.p.m. for promotion to the post of Stenographer Grade-II.

7. This Special Civil Application is contested by the respondents. On the record of this Special Civil Application I find reply to this Special Civil Application filed by the District & Sessions Judge, Mahesana which is at page nos.42 to 45. Then, there is an affidavit of Mr.B.K.Bhatt, District & Sessions Judge, Mahesana dated 5.4.1990 which appears reply to the amended Special Civil Application. Then there is an affidavit of Mr.N.K.Desai, District Judge, Mahesana dated

24.3.1988. This is unaffirmed affidavit and it also does not born out whether the copy of the same was given to the learned counsel for the petitioner or not. This writ petition was admitted on 30.3.1988. This court has passed the following order.:

"Rule.

By way of interim relief it is directed that if the petitioner is serving on the post of Stenographer grade III, he shall be continued on the said post. If, today, he is serving on the post of Section Writer, then he shall be continued on that post. However, it is clarified that this order will not come in the way of respondent authorities to terminate his services in accordance with law. But in that case the order shall be immediately placed on the record of this petition."

The petitioner has not filed any rejoinder affidavit nor any reply to the affidavit of Mr.B.K.Bhatt, District & Sessions Judge, Mahesana. There is all possibilities that third affidavit would not have been given to the petitioner and as a result thereof there is no question of giving reply to it by him.

8. In reply to the Special Civil Application, it is the case of the respondents that names of five candidates were sponsored on the request of the District Judge, Mahesana by the Employment Exchange Office for the post of English Stenographer Grade-III. Only the petitioner was present, but he was not found suitable for the post. However, the petitioner has shown his willingness to work on temporary basis and as there was no English Stenographer Grade-III the petitioner was given adhoc appointment as English Stenographer Grade-III for fixed term. Subsequently, advertisement has been made for the post of English Stenographer Grade-II. Though the petitioner applied for the said post, he was not selected. Three other persons were selected. The petitioner was not given any regular appointment on the post of English Stenographer Grade-III. On availability of English Stenographer Grade-II, what the respondents contended that the services of the petitioner could have been terminated, but he was continued. In fact, he was not selected for both the posts of English Stenographer Grade-III and Grade-II. On reduction of one post of English Stenographer Grade-III the petitioner was accommodated as Section Writer.

9. The petitioner filed Civil Application No.207/88 challenging the promotion of one K.J.Patel to the post of English Stenographer Grade-II. This Civil Application is replied by filing detailed affidavit of Mr.N.K.Desai, District Judge, Mahesana. Copy of this affidavit is on the record of this Special Civil Application. In the affidavit dated 24.3.1988 it is reiterated that in August, 1984 the names of suitable candidates for the post of English Stenographer Grade-III and Grade-II were called from the Employment Exchange Office. Interviews were held on 20.11.1984. The petitioner alone has remained present, but he was not found suitable. However, he was given temporary appointment as the Stenographer Grade-III by downgrading the post of English Stenographer Grade-II.

10. It is further been stated that, when the subsequent selection was made, the petitioner was not found suitable for the post of English Stenographer Grade-II. It is reiterated that the petitioner was not selected either for the post of English Stenographer Grade-III or Grade-II. There is an order of the District Judge, Mahesana on the record of this Special Civil Application dated 17.10.1987 under which the petitioner has been given promotion on temporary basis as English Stenographer Grade-III. Mr.K.H.Patel was given promotion on creation of the post of 2nd Joint District Judge & Additional Sessions Judge, Mahesana under the order dated 10.10.1987, and that post was felt vacant, it was filled in on temporary basis by giving promotion to the petitioner under the order aforesaid.

11. It is urged that Mr.K.H.Patel was given promotion rightly as he was duly selected on the post of English Stenographer Grade-III.

12. Shri A.M. Raval, learned counsel for the petitioner contended that the termination of the services of the petitioner is bad in law. He was appointed as Stenographer Gr. III on which post he continued for all the time except for some period he was ordered to be posted as Section Writer. It has next been contended that the reversion of the petitioner to the post of Section Writer is illegal as other persons were retained on the higher post. Promotion given to other person who is junior to him is illegal. Lastly it is contended that the termination of the services of the petitioner after serving the respondents for so many years is otherwise illegal.

13. Shri Yogesh Patel, counsel for the respondents contended that the petitioner has no right to continue in employment as Stenographer Gr. III or as a Section Writer. In fact it was only an arrangement under which he continued so long as possible but when the posts were not there his services were terminated. The petitioner was only a temporary employee and he has not acquired any right of permanency in the employment and rightly his services were terminated. It has next been contended that none of the junior to the petitioner has been retained in service. Replying to the challenge made by the petitioner to the order under which he was reverted to the post of Section Writer, it is submitted that at that point of time, his services could have been terminated but he was adjusted by continuing on the post of Section Writer. Carrying this contention further, Shri Patel contends that the reversion/termination of the services of the petitioner is just, legal and correct to which no exception can be taken.

14. I have given my thoughtful consideration to the contentions made by the learned counsel for the parties.

15. In the month of August, 1984, on requisition of the respondents, the Employment Exchange sponsored the name of suitable candidates for the post of Stenographer Gr. II and III. Interviews were held on 28th November, 1984. In the interview, the petitioner was the only person who remained present. He was interviewed by the selection committee but he was not found suitable for either of the post. When he was not found suitable for either of the post, I fail to see any justification in the action of the respondents to appoint him on temporary basis as Stenographer Gr. II. This act of the respondents create a doubt and suspicion in the mind of the Court that the petitioner would have possibly been favoured. Once he was not found suitable for appointment as Stenographer Gr. II and III then only possible step would have been to call the fresh applications or send a requisition to Employment Exchange but not to give the appointment to the petitioner. Normally from this one act it is difficult to draw an inference of favouritism in the appointment of the petitioner on temporary basis but if we go by the subsequent facts, it is clearly borne out therefrom that there was somebody in the office of the respondents who favoured the petitioner in the employment.

16. As per the reply to the special civil application, the petitioner was posted in the Court of Civil Judge, (S.D.), Mahesana. Reference in this respect

may have to the affidavit of N.K. Desai, District Judge, Mahesana dated 24th March, 1988 filed in civil application No. 207/88. It reveals therefrom that the petitioner then was brought in the court of Joint District Judge, Mahesana. The post of Jt. District Judge, Mahesana was discontinued w.e.f. 1-3-1987. As a result of which, the staff persons who were temporarily working in this court their services were to be dispensed with and as a result thereof, the services of the petitioner could have been brought to an end but he was reverted to the post of Section Writer. The services of the members of staff of this category are to be discontinued also but another favour has been extended to the petitioner for undisclosed reasons and he was continued in service as Section Writer. It is different matter that the petitioner is challenging the reversion order on the ground of mala fide but it is not the case of malafide. On the contrary, it is case where he has been favoured otherwise but for this favour his services could have been brought to an end. Challenge to the order of the respondent to revert the petitioner from the post of Stenographer Gr. III to the post of Section Writer is wholly misconceived and without any merits and substance. He was temporarily appointed on the post of Stenographer Gr. III and it is a case where on abolition of the temporary post of Jt. District Judge he was again temporarily appointed on the post of Section Writer. The words used in the order or the manner and fashion in which the order has been passed is not relevant and material. The substance of the matter has to be considered and accordingly the order is to be taken. This order which is called to be a reversion order is not in fact a reversion order but an order of temporary appointment of the petitioner on the post of Section Writer which clearly borrows out from the fact that he was appointed though not found suitable for the post of Stenographer Gr. III on temporary basis against temporary post which was there in the court of Jt. District Judge, Mahesana and as a result of discontinuation of that court, his services could have been brought to an end but it was not done as he was appointed on the post of Section Writer. There was no question of any reversion in such matter. Only termination could have been there but he was taken as Section Writer and this is a temporary appointment given to him.

17. The challenge to the order of reversion on the ground that juniors were retained does not stand to any merits. The petitioner has not named the junior persons. He has made reference to three persons out of which two



were not named. Name has been given only of K.H. Patel but his case is clearly distinguishable and the petitioner can not have any parity with him. None of those persons was impleaded as party and behind their back, no such decision can be given which otherwise will adversely affect them in the service matter.

18. In the month of February, 1985 again the applications for the post of Stenographer Gr. II were invited. The petitioner applied for the same and interviews were held on 21-2-1985. The petitioner was interviewed but he was not found suitable. Again this post was advertised on 4-3-1985. The petitioner applied but again he was not found suitable. In this interview, three other persons were selected. It is unfortunate that though the petitioner has not been selected and in the subsequent selection also, he was continued as Stenographer Gr. III, which shows that how he has been favoured in the matter by undisclosed person. On his nonselection in February, 1985 and March, 1985, as he was given ad hoc appointment as Stenographer Gr. III his services could have been dispensed with.

19. There is yet another example of favouritism in this case. One post of 2nd Jt. District Judge and Addl. Sessions Judge, Mahesana was created under the notice of this court dated 23-9-1987. On creation of this post, the post of Stenographer Gr. II was also created and Shri K.H. Patel who was working as Stenographer Gr. III was found suitable for promotion on the post of Stenographer Gr. II and he was promoted on the said post vide order dated 10-10-1987 and the petitioner was appointed as Stenographer Gr. III under the order dated 13-10-1987. This appointment was not given to the petitioner by any selection. It was against the temporary post as Shri Patel was promoted as Stenographer Gr. II on creation of the post of 2nd Jt. District Judge and Addl. Sessions Judge, Mahesana. From the affidavit of the respondent NO.2 I find that the petitioner was posted with 2nd Jt. Civil Judge, (S.D) and J.M.F.C., Mahesana. That court was discontinued under the notification dated 10-2-1988 and at this point of time, his services could have been terminated but fourth favour has been done to the petitioner and on the creation of the post of Extra Assistant Judge w.e.f. 5-10-1988 he was continued with that court. The post of 2nd Joint District Judge, Mahesana and 2nd Extra Assistant Judge, Mahesana were disband w.e.f 7-7-1989. The temporary staff attached to this court was required to be discharged. Accordingly, the services of seven temporary employees including the petitioner were brought

to an end from 15-7-1989. This time the petitioner was not favoured and the reason may be that there was no scope to favour him as there would not have been any post available. The petitioner was appointed only on temporary basis against the temporary posts from time to time and naturally so long as it could have been possible he has been favoured and that too without there being any justification for the same. In these facts, on discontinuation of the courts, naturally the temporary employees could not have been continued in service and rightly the petitioner's services were brought to an end under the order dated 15-7-1989. This court's order under which interim relief has been granted to the petitioner also makes it clear that the petitioner's services can be terminated in accordance with law. This court has made it clear that this interim relief will not come in the way of the respondent authorities to terminate the services of the petitioner in accordance with law. The petitioner was a temporary employee and he has no right to the post and on abolition of the temporary post or otherwise also when the work was not available for him his services could have been brought to an end even without notice and opportunity of hearing. A temporary Government servant does not become permanent unless it acquires that capacity by force of any rule or is declared as permanent servant. The petitioner, as stated earlier, was not selected for the post of Stenographer Gr. III or Gr.II though from time to time the posts were advertised and he also applied for the same. Learned counsel for the petitioner has not produced any order on the record of this special civil application under which the petitioner has been made permanent nor he has shown any rule under which such temporary employees become permanent. There is no order on the record where the petitioner has been declared as a permanent servant. At the cost of repetition, it is to be stated that the petitioner has been favoured in the employment and he was continued so long as it was possible but ultimately when the post was not available and he was not selected naturally at one point of time his services are to be brought to an end, what precisely it has been done under the impugned order. Reference may have to the decision of the Apex Court in the case of M.P.H.S.V.N. vs. Devendrakumar reported in JT 1995 (1) SC 198 and to the Division Bench decision of this court in the case of Bhanmati Tapubhai Muliya vs. State of Gujarat reported in 1995 (2) GLH 228. The order of reversion of the petitioner impugned in this special civil application as well as his termination of services are perfectly legal and justified. None of the legal or fundamental rights of the petitioner are infringed. In

fact, this petition is nothing but only to get the conferment of permanency in the services by a temporary employee who has not been found suitable for the post. As a favour, he has been given the appointments on temporary basis. It is not permissible under the law nor this court can confer any such right or give any direction under Article 227 of the Constitution in favour of the petitioner.

20. As a result of the aforesaid discussion, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. No order as to costs.

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pathan/zgs